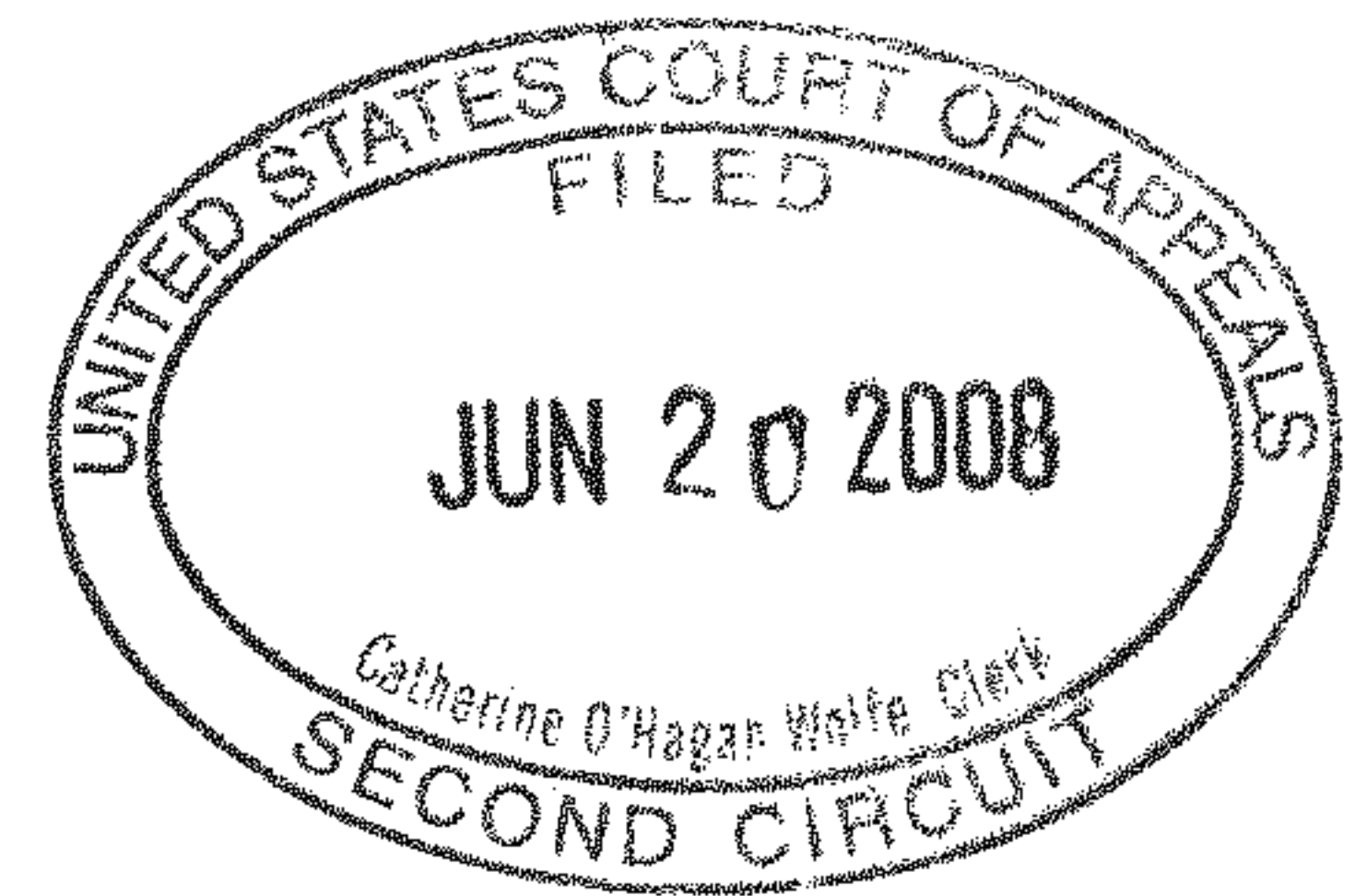


SDNY/NYNY  
06-cv-2975  
RAKOFF**MANDATE**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

KENNEY, BECKER, LLP v. KENNEY

No. 08-2307-cv

**STIPULATION WITHDRAWING APPARENTLY PREMATURE APPEAL**

Whereas this case was removed, from the state court in New York County, to the United States District Court for the Southern District of New York, on April 17, 2006; and

Whereas the District Court, on June 5, 2006, entered an order placing this case on suspense and directing the parties to keep the Court informed of the status of arbitration proceedings ongoing between the parties; and

Whereas the District Court, on March 6, 2008, granted defendant's motion for sanctions against plaintiffs "for plaintiffs' wrongful issuance, under the purported authority of this Court, of a third-party subpoena in the arbitration proceedings"; and

Whereas the District Court, on April 23, 2008, ordered that "plaintiffs are jointly and severally liable to defendant for \$30,000"; and

Whereas plaintiffs, on May 8, 2008, filed their notice of appeal from the imposition of the above monetary sanction; and

Whereas both the Supreme Court of the United States, in *Cunningham v. Hamilton County*, 527 U.S. 198 (1999), and the United States Court of Appeals from the Second Circuit, in *New Pacific v. Excal*, 252 F.3d 667 (2d Cir. 2001), have held that sanctions cannot be appealed until the entry of a final judgment on pending claims for relief; and

Whereas entry of a final judgment by the District Court awaits completion of the arbitration proceedings, at which time the District Court can consider cross-motions to confirm or vacate arbitral award, filed by the parties; WHEREFORE,

IT IS HEREBY STIPULATED AND AGREED by the parties through their undersigned counsel that the above apparently premature appeal be withdrawn, without costs or attorneys' fees for time spent on this appeal.

  
 Attorney For Appellants

  
 Attorney For Appellee

SO ORDERED:

FOR THE COURT

Catherine O'Hagan Wolfe, Clerk of Court

By

  
 Stanley A. Bass, Staff Counsel

June 20, 2008

A TRUE COPY

Catherine O'Hagan Wolfe, Clerk

by

  
 DEPUTY CLERK

JUN 24 2008

CERTIFIED: